

Congress of the United States
Washington, D.C. 20510

November 4, 2022

The Honorable Daniel B. Maffei
Chairman
Federal Maritime Commission
800 North Capitol Street, N.W
Washington, D.C. 20573

RE: Federal Register Docket No. 22-24

Dear Chairman Maffei:

We write regarding the Commission's proposed rulemaking to define unreasonable refusal to deal or negotiate with respect to vessel space accommodations under the *Ocean Shipping Reform Act of 2022* (Public Law 117-14). As the House co-authors of that law, we welcome this opportunity to reinforce congressional intent regarding this key definition and rulemaking.

The Commission's regulatory definition for "unreasonable" will apply to vessel space accommodation for both importers and exporters. Accordingly, this new prohibition in the law is obviously intended to prevent ocean carriers from disproportionately and unfairly favoring one side of their trade over the other. During the height of the global COVID-19 pandemic, we heard from countless American exporters who were unable to secure vessel space from ocean carriers and shipping containers at seemingly any price, as noted in your testimony before the House Subcommittee on Coast Guard and Maritime Transportation on June 15, 2021. Ocean carriers refusing to accommodate American exports is an unreasonable business practice and, following passage of the *Ocean Shipping Reform Act of 2022*, also is now illegal.

Common carriers have a longstanding and well-understood responsibility under federal law to serve both sides of their respective trade: incoming and outgoing. However, the ocean carriers have repeatedly neglected this responsibility. From January 2020 until February 2022, spot rates for ocean freight shipping between Asia and the United States increased by some 100 percent compared to a more than 1,000 percent increase in rates between the United States and Asia. One independent analysis published in January 2021, found that three in four containers offloaded at American ports were returning empty to Asia. At the same time, ocean carriers cancelled longstanding scheduled service to secondary ports of call important to agricultural exporters like the Port of Oakland, California. Ocean carriers' profits increased fivefold in 2021, compared to the previous decade. Rather than facilitating reciprocal transoceanic trade during the most profitable period in recent memory, the ocean carriers instead abandoned their longstanding American export customers in favor of their Asia business. Ocean carriers can always find more shippers. Shippers cannot always find more ocean carriers, particularly for export cargo bookings.

Foreign businesses' and ocean carriers' access to American ports and our consumers is a privilege, not a right. In return, ocean carriers must provide reasonable opportunities for American exporters to get their goods to foreign markets. For American agricultural and other

major exporters, access to valuable foreign markets is hard won following decades of methodical work forging business international relationships and taxpayer investment by the United States Government. When finalized, this congressionally directed rulemaking must ensure reciprocity in transoceanic trade between other countries and the United States.

We expect the Commission's rulemaking to account for the significant consolidation within the ocean shipping industry, which is now dominated by foreign-flagged and, increasingly, de facto state-controlled carriers. The ten largest ocean carriers and three global alliances reportedly control more than 80 percent of the global market. As American exporters and other businesses navigate this anticompetitive marketplace, they must have an ally in our nation's only ocean carrier regulator: the Federal Maritime Commission. We believe that the Commission must also address the ocean carrier's responsibility to make a good-faith effort to secure the equipment necessary for receiving, loading, carriage, unloading, and delivery of cargo at the ports, such as containers and chassis. Even if an ocean carrier agrees to deal or negotiate, that agreement is only as good as their willingness to then help secure the means to provide that ocean transportation service.

Lastly, we will be submitting a separate formal comment on the Commission's proposed rulemaking on billing requirements for demurrage and detention (Federal Register Docket No. 2022-0066) before the deadline in December 2022. We appreciate the Commission's ongoing work to implement fully the *Ocean Shipping Reform Act of 2022*. Thank you for considering our comments.

Sincerely,

John Garamendi
Member of Congress

Dusty Johnson
Member of Congress

Jim Costa
Member of Congress

Adrian Smith
Member of Congress

Mike Thompson
Member of Congress

David G. Valadao
Member of Congress

Jimmy Panetta
Member of Congress